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Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE AND DENYING CERTIFICATE OF APPEALABILITY

Petitioner's Objections essentially rehash the arguments made in the Petition and the Traverse. He also adds vague and generalized allegations of ineffective

¹ The Court substitutes in Domingo Uribe, Jr., Petitioner's current custodian, as the proper Respondent. *See* Dkt. No. 23 (Ntc. of Address Change); Fed. R. Civ. P. 25(d).

1 assistance of counsel. To the extent that Petitioner is attempting to assert new
2 claims of ineffective assistance that were not advanced in the Petition, the Court
3 exercises its discretion and declines to consider such belatedly raised and
4 unexhausted claims at this juncture. *See United States v. Howell*, 231 F.3d 615,
5 621 (9th Cir. 2000) (“[A] district court has discretion, but is not required, to
6 consider evidence presented for the first time in a party’s objection to a magistrate
7 judge’s recommendation.”). That aside, even if this Court were to consider such
8 claims, Petitioner’s bald allegations are insufficient to state a basis for habeas
9 relief. *James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) (“Conclusory allegations
10 which are not supported by a statement of specific facts do not warrant habeas
11 relief.”).

12 Accordingly, IT IS ORDERED THAT:

- 13 1. The Report and Recommendation is approved and adopted.
- 14 2. Judgment be entered dismissing this action with prejudice.
- 15 3. The Clerk serve copies of this Order and the Judgment on the parties.

16 Additionally, for the reasons stated in the Report and Recommendation, the
17 Court finds that Petitioner has not made a substantial showing of the denial of a
18 constitutional right. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b); *Miller-El v.*
19 *Cockrell*, 537 U.S. 322, 336 (2003). Thus, the Court declines to issue a certificate
20 of appealability.

21
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23 DATED: June 3, 2011



HON. DALE S. FISCHER
UNITED STATES DISTRICT JUDGE